

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED
for N. Burg
FEB 17 2009
JOHN F. CORCORAN, CLERK
BY: *J. Bright*
DEPUTY CLERK

DONALD SIMMONS,)
Plaintiff,) Civil Action No. 5:08CV00032
v.)
FINAL ORDER
MICHAEL J. ASTRUE,) By: Samuel G. Wilson
Commissioner of Social Security,) United States District Judge
Defendant.)

This case was referred pursuant to 28 U.S.C. § 636(b)(1)(B) to the Honorable James G. Welsh, United States Magistrate Judge. The Magistrate Judge has filed a report recommending that an order be entered, affirming the final decision of the Commissioner,¹ granting summary judgment to the defendant, and denying plaintiff's motion for summary judgment. Objections to the report and recommendation have not been filed by the plaintiff, and the court, upon review of the record, is of the opinion that the report should be adopted. It is accordingly, ORDERED and ADJUDGED that the final decision of the Commissioner is AFFIRMED, summary judgment is GRANTED to the defendant, plaintiff's motion for summary judgment is DENIED, and this case is ORDERED stricken from the docket of the court.

ENTER: This February 17, 2009.

UNITED STATES DISTRICT JUDGE

¹ The clear import of the Report and Recommendation by the Magistrate Judge is to affirm the final decision of the Commissioner; however, under Section IV, Findings of Fact, the Magistrate Judge mis-stated proposed findings Nos. 11 and 12, and they are inconsistent with the report. Accordingly, the court adopts the Report and Recommendation, except for those two proposed findings.